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SUBJECT: GOT OVERHAULING CRIMINAL LAW SYSTEM

Classified by Polcouns John Kunstadter; reasons 1.5 b and d.

11. (U) Summary: An experts committee is conducting a thorough overhaul of three major Turkish laws that determine what constitutes a crime, how crimes are punished, and how the judiciary functions in criminal matters. The committee will propose a wide range of reforms, including: eliminating rape laws criticized by women's rights groups as discriminatory; increasing punishments for torture; allowing judges to reject unsubstantiated indictments; and expanding prison rehabilitation programs. The head of the parliamentary Justice Committee says he expects Parliament to adopt the revised laws by the end of 2004. If the committee's texts are adopted relatively intact, the new laws will be as significant as any other GOT human rights reforms to date. End Summary.

Experts Committee Overhauling Laws

12. (U) A four-member experts committee of criminal law scholars is revising the Penal Code, the Execution of Punishments Law, and the Criminal Procedure Code. The committee members -- Gazi University professors Cumhur Sahin and Izzet Ozgenc; Istanbul University professor Adem Sozuer; and Marmara University professor Ahmet Gokcen -- told us they are about halfway done with the project, which will result in a proposal to replace about 95 percent of the articles in the three laws. The revisions are designed, in part, to bring Turkey's criminal law into conformity with the letter and spirit of the extensive EU-related human rights reforms adopted by Parliament over the past two years.

Legal "Minefield" Will be Cleared

13. (C) In addition, committee members say they will simplify what is now a complicated set of overlapping rules that even veteran trial lawyers find confusing. The Penal Code, for example, will be reduced from 500 articles to about 300. Sahin said the redundancy of the laws undermines human rights reforms; each time Parliament revises an article considered authoritarian, creative prosecutors find another, similar article they can use to punish the same types of acts. "The current system is like a minefield. Because of the reforms, people think the field has been cleared. But then they walk on it, and BOOM!" he said. The revised Penal Code will supersede other laws in case of contradiction. For example, the committee will remove a Penal Code provision allowing for a lifetime ban from politics. The Election Law, which is outside the committee's mandate, also allows for such a ban. But because the Penal Code will take precedence, it will effectively nullify the Election Law provision.

MP: New Laws Should be Adopted This Year

14. (U) Koksall Toptan, chairman of the parliamentary Justice Committee, to which the experts committee is assigned, told us he hopes to have the revised laws approved by the Justice Committee before the July legislative recess, and adopted by the full Parliament by the end of the year. He said he expects Parliament to adopt the revised texts without significant changes, noting that a subcommittee comprising three MPs from the ruling AK party and two from the opposition CHP has unanimously approved all revisions to date. Former Justice Minister Aysel Celikel, who has maintained close contact with her former student Sozuer and who is a paragon of Atatürkist virtue, also told us she is hopeful the revisions will pass intact. Justice Minister Cicek recently expressed to us a similar view.

Key Measures and Analysis

15. (U) The following is a summary and analysis of the key reforms being prepared by the committee:

16. (C) Rape Laws: The committee will remove Penal Code articles on rape that EU officials and women's rights advocates have criticized as discriminatory and demeaning. The controversial articles include: rape is considered a "crime against society" rather than a "crime against the individual"; rape between spouses is not legally considered rape; rapists and kidnappers can avoid punishment if they marry their victims; and punishments for rape are greater if the victim is married, lesser if the victim is single, and even lesser if the victim is single and not a virgin.

-- Analysis: Turkish women's rights advocacy groups protested vigorously when a previous revision of the Penal Code failed to remove these articles. The articles are also frequently cited by Turkey's Eurocritics as evidence of the "cultural divide" that separates Turkey from Europe. Although the EU has not raised the articles as part of its official dialogue with the GOT, EU officials and representatives of EU states have made their displeasure known. During a December speech in Ankara, Hansjorg Kretschmer, head of the European Commission Representation to Turkey, singled out the articles for criticism, arguing that the Penal Code fails to "recognize and protect women's human rights." A Danish diplomat told us that female parliamentarians in Denmark have insisted that Copenhagen oppose Turkey's EU candidacy unless these articles are revoked.

17. (C) Indictments: In cases where indictments appear incomplete or dubious, judges will be given the authority to return the indictments to the prosecutor's office for completion, or to throw them out altogether. Under current regulations, once prosecutors file an indictment a court must hold at least one hearing.

-- Analysis: Turkish prosecutors often file harassment indictments, knowing they lack the evidence for a conviction. Kurdish rights activists, journalists, non-Muslims, leftists, foreigners, and other perceived miscreants are the preferred targets. For example, prosecutors repeatedly drag leaders of the Human Rights Association to court on charges of terrorism, but have never proven their case. In one high-profile harassment case, the leaders of the Turkey branches of five German pro-democracy foundations were indicted on espionage charges in October 2002. The principle evidence in the case was a book written by the late Necip Hablemitoglu, a conspiracy-obsessed, reportedly Russian-funded author not known for probity. The case was dismissed in March 2003. Many officials in the bureaucracy support these types of indictments, seeing them as a legitimate method for monitoring suspect groups. The practice is built into the system -- the Court of Cassation awards points to prosecutors based on the number of cases they open, regardless of the final outcomes. Having a high point total is an advantage in competing for promotions. Giving judges the authority to dismiss indictments will not make much difference at first, because judges tend to share the view that these unsubstantiated indictments are legitimate means of protecting the State. But a new generation of judges with a different mindset could use this authority effectively.

18. (C) Torture: Under the current Penal Code, torture is considered a single, distinct crime, though it often involves a series of separate acts. The committee will revise the code so that, for example, a police officer could be charged separately with beating, threatening, and forcing a confession. Currently, the maximum sentence for torture is eight years per victim, and most convicts sentenced to jail terms get two years. Under the revised system, a defendant in a brutal torture case could be convicted separately for a number of acts and sentenced to 15 years or more.

-- Analysis: Criticism of Turkey's handling of torture cases generally focuses on the fact that police defendants are rarely convicted and sentenced to jail terms. This reform would address a lesser-known problem -- even when the courts do send police to jail their sentences usually do not match the magnitude of the crime.

9. (U) Parole: Parole will be introduced, both as an alternative to jail terms and as a system for monitoring released convicts.

-- Analysis: Under the current system, judges often suspend or postpone sentences when they do not want to incarcerate a convict, in which case there is no punishment at all. Introducing parole will give judges another option.

10. (U) Prison Reform: A number of amendments will be made to improve prison rehabilitation programs. Prisons will be required to provide more opportunities for education, training, and work. Prisoners who participate in these programs will be allowed more time to socialize with other inmates, reducing the amount of time they spend in cells.

-- Analysis: Turkey has nearly phased out its prison ward system, in which 30-100 inmates lived in a single ward. The wards often fell under the control of organized crime or terrorist organizations. In 2000, authorities removed hundreds of inmates from ward prisons and transferred them to small-cell F-Type prisons. The new facilities resemble prisons in more developed countries, but leftist critics have claimed that prisoners are isolated and are not being prepared to re-enter society. However, the Council of Europe's Committee to Prevent Torture, which regularly inspects Turkish prisons, has not raised serious concerns about the F-Type prisons.

11. (U) Plea Bargaining: Plea bargaining will be introduced as an option for a broad range of crimes. It is now used only for petty crimes.

-- Analysis: The lack of a plea bargaining system for most crimes has been cited as a cause of the heavy judicial workload, which, in turn, slows the trial process. Following his May 2003 U.S. visit, Constitutional Court President Bumin said he favored the introduction of plea bargaining.

Comment

12. (C) This project, launched by the AK government, is the most sincere effort Turkey has seen in decades to bring about fundamental human rights reform. Unlike the seven legislative reform packages adopted over the past two years, these legal reforms are not strictly tied to EU accession requirements. The committee members are an impressive group -- they are among the very few in Turkey who genuinely understand the importance of the rule of law and support Western human rights concepts. According to Vahit Bicak, head of the Human Rights Presidency in the Prime Ministry, Justice Minister Cicek met with the four scholars after reading their public criticisms of an earlier effort to revise the Penal Code under the Ecevit government, which resulted in a draft panned by the Council of Europe. Cicek later recommended that Parliament appoint them to the committee.

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